

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

**MEMORANDUM,
REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Presently pending before the court are the defendant's Motions To Suppress Evidence And Statements (Docket Nos. 33 and 95). All pretrial motions were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b).

The defendant filed his first Motion To Suppress Evidence And Statements on September 10, 2008. That motion, along with others filed by the defendant, was heard before the undersigned on November 6, 2008. At that hearing testimony and evidence was adduced on the defendant's Motion To Suppress. A transcript of the hearing was subsequently prepared and filed at the direction of the court (Docket No. 44). After further proceedings, on February 9, 2009, the undersigned filed a Memorandum, Report And Recommendation, in which findings of fact and conclusions of law were set out as to defendant's Motion To Suppress, and recommending

that the motion be denied. (Docket No. 48). The defendant was granted until February 20, 2009, in which to file objections to the report and recommendation with the district court. Thereafter the defendant made several requests for extensions of time to file objections, which requests were granted. The defendant filed objections to the report and recommendation, including objections to the findings of fact and conclusions of law as to the defendant's Motion To Suppress Evidence, on May 8, 2009. (Docket No. 70).

On May 28, 2009, a second superseding indictment was filed by the grand jury. On June 1, 2009, the defendant was arraigned on the second superseding indictment, entering a plea of not guilty. The defendant was at that time granted time to file additional pretrial motions. On June 26, 2009, the defendant filed his second Motion To Suppress Evidence And Statements (Docket No. 95). In his second Motion To Suppress the defendant averred that he was asserting the same claims set out in his first motion. At a pretrial motion hearing on August 11, 2009, counsel for the defendant informed the court that there was no additional testimony or evidence which the defendant wished to present on his second Motion To Suppress and that the motion could be ruled on the testimony and evidence adduced on the first Motion To Suppress.

Therefore,

IT IS HEREBY ORDERED that the findings of fact and conclusions of law set out in the Memorandum, Report and Recommendation filed on February 9, 2009, are adopted herein.

IT IS HEREBY RECOMMENDED that the defendant's Motions To Suppress Evidence And Statements (Docket Nos. 33 and 95) be denied.

The parties are advised that they have until **September 14, 2009**, in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).



Frederick R. Biros

UNITED STATES MAGISTRATE JUDGE

Dated this 3rd day of September, 2009.